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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY WILLIAM CHUNG,

Defendant and Appellant.

H023514

(Santa Clara County

Super. Ct. No. CC196504)

A jury convicted defendant Bobby William Chung of several narcotics-related offenses. On appeal, defendant contends that the trial court erred by instructing the jury in the language of CALJIC No. 17.41.1. We disagree and affirm the judgment.

THE INSTRUCTION

The trial court advised the jury as follows: “The integrity of a trial requires that jurors, at all times during their deliberations, conduct themselves as required by these instructions. Accordingly, should it occur that any juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty or punishment, or any other improper basis, it is the obligation of the other jurors to immediately advise the Court of the situation.” (See CALJIC No. 17.41.1 (1998 new) (6th ed. 1996).)

DISCUSSION

Defendant claims that the instruction (1) violated his rights to jury trial and due process because it tells the jury that statements could be exposed thereby inhibiting free and open deliberations, (2) violated his right to a unanimous verdict by inviting majority

jurors to use the threat of being reported for misconduct to coerce minority jurors, and (3) infringed upon the jury's power to nullify. These and similar arguments were rejected in *People v. Engelman* (2002) __ Cal.4th__ [2002 DJDAR 8034; 2002 WL 1578778].

In *Engelman*, the court determined that CALJIC No. 17.41.1 “does not infringe upon defendant’s federal or state constitutional right to trial by jury or his state constitutional right to a unanimous verdict.”¹ (*People v. Engelman, supra*, __ Cal.4th at p. __ [2002 DJDAR at p. 8034].)

The court was not convinced that, “merely because CALJIC No. 17.41.1 might induce a juror who believes there has been juror misconduct to reveal the content of deliberations unnecessarily (or threaten to do so), the giving of the instruction constitutes a violation of the constitutional right to trial by jury or otherwise constitutes error under state law.” (*People v. Engelman, supra*, __ Cal.4th at p. __ [2002 DJDAR at p. 8035].)

The court explained: “[A]lthough the secrecy of deliberations is an important element of our jury system, defendant has not provided any authority, nor have we found any, suggesting that the federal constitutional right to trial by jury (or parallel provisions of the California Constitution, or other state law) requires absolute and impenetrable secrecy for jury deliberations in the face of an allegation of juror misconduct, or that the constitutional right constitutes an absolute bar to jury instructions that might induce jurors

¹ However, the court recognized that “CALJIC No. 17.41.1 has the potential needlessly to induce jurors to expose the content of their deliberations” and “[t]he threat that the contents of the jury’s deliberations might be reported to the judge could chill the free exchange of ideas that lies at the center of the deliberative process.” (*People v. Engelman, supra*, __ Cal.4th at pp. __ [2002 DJDAR at pp. 8036-8037].) The court directed that “CALJIC No. 17.41.1 not be given in trials conducted in the future” because it believed that the instruction “creates a risk to the proper functioning of jury deliberations and that it is unnecessary and inadvisable to incur this risk.” (*People v. Engelman, supra*, __ Cal.4th at p. __ [2002 DJDAR at p. 8037].)

to reveal some element of their deliberations.” (*People v. Engelman, supra*, ___ Cal.4th at p. ___ [2002 DJDAR at p. 8035].)

The court found that “[t]he instructions as a whole fully informed the jury of its duty to reach a unanimous verdict based upon the independent and impartial decision of each juror. (CALJIC No. 17.40 [‘The People and the defendant are entitled to the individual opinion of each juror. [¶] Each of you must decide the case for yourself’]; CALJIC No. 17.50 [instructing that in order to reach a verdict, ‘all twelve jurors must agree to the decision’].)” (*People v. Engelman, supra*, ___ Cal.4th at p. ___ [2002 DJDAR at p. 8035].) It noted that CALJIC No. 17.41.1 “does not contain language suggesting that jurors who find themselves in the minority, as deliberations progress, should join the majority without reaching an independent judgment.” (*People v. Engelman, supra*, ___ Cal.4th at p. ___ [2002 DJDAR at p. 8036].)

As to the argument that CALJIC No. 17.41.1 infringes upon defendant’s constitutional right to jury nullification, it is without merit in light of *People v. Williams* (2001) 25 Cal.4th 441, 449-463. The court in *Williams* declared: “Jury nullification is contrary to our ideal of equal justice for all and permits both the prosecution’s case and the defendant’s fate to depend upon the whims of a particular jury, rather than upon the equal application of settled rules of law.” (*Id.* at p. 463.) The court explained that although the possibility of jury nullification exists because of certain procedural aspects of our criminal justice system, a defendant does not have a constitutional right to that possibility. (*Id.* at pp. 449-451.)

DISPOSITION

The judgment is affirmed.

Premo, Acting P.J.

WE CONCUR:

Elia, J.

Wunderlich, J.